

AMENDED IN ASSEMBLY JULY 29, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1646**

**Introduced by Assembly Member Benoit**

*(Coauthors: Assembly Members Aghazarian, Bates, Cogdill, Cox,  
Dutton, Haynes, and Maze)*

*(Coauthors: Senators Denham, Johnson, Margett, and Oller)*

February 21, 2003

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~~An act to repeal Sections 45103.1 and 88003.1 of the Education Code, relating to personal services contracting. An act to repeal and add Sections 45103.1, 45103.5, 88003.1, and 88004.5 of the Education Code, and to add Section 3562.3 to the Government Code, relating to public education.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1646, as amended, Benoit. ~~Personal services contracting: school and community college districts~~ *Contracting for noninstructional services.*

*(1) Existing law authorizes school districts and community college districts to enter into contracts for personal services customarily performed by classified employees to achieve cost savings if prescribed conditions are met.*

*This bill would repeal these provisions and would, instead, authorize school districts and community college districts to contract for any noninstructional services, as prescribed.*

*(2) Existing law sets forth certain requirements relating to higher education employer-employee relations, including, but not limited to,*

*the requirement to meet and confer in good faith regarding terms and conditions of employment.*

*This bill would declare that these employer-employee relations provisions do not limit the authority of the University of California, the Hastings College of the Law, and the California State University, to enter into contracts with third parties for noninstructional services, as prescribed.*

~~Under existing law, the governing board of any school district is required to employ persons for positions not requiring certification qualifications, to be known as the classified service. Under existing law, the governing board of any community college district is required to employ persons for positions that are not academic positions, also to be known as the classified service. Each position in the classified service is required to have a designated title, a regular minimum number of assigned hours, a specific statement of duties, and a regular salary range. Existing law permits the use of personal services contracts in school districts and community college districts, pursuant to certain standards, notwithstanding the above-described law pertaining to classified service.~~

~~This bill would repeal those provisions that permit and establish standards for the use of personal services contracts in school districts and community college districts.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1. Section 45103.1 of the Education Code is~~
- 2 ~~SECTION 1. Section 45103.1 of the Education Code is~~
- 3 ~~repealed.~~
- 4 ~~45103.1. (a) Notwithstanding any other provision of this~~
- 5 ~~chapter, personal services contracting for all services currently or~~
- 6 ~~customarily performed by classified school employees to achieve~~
- 7 ~~cost savings is permissible, unless otherwise prohibited, when all~~
- 8 ~~the following conditions are met:~~
- 9 ~~(1) The governing board or contracting agency clearly~~
- 10 ~~demonstrates that the proposed contract will result in actual overall~~
- 11 ~~cost savings to the school district, provided that:~~
- 12 ~~(A) In comparing costs, there shall be included the school~~
- 13 ~~district's additional cost of providing the same service as proposed~~

1 by a contractor. These additional costs shall include the salaries  
2 and benefits of additional staff that would be needed and the cost  
3 of additional space, equipment, and materials needed to perform  
4 the function.

5 (B) In comparing costs, there shall not be included the school  
6 district's indirect overhead costs unless these costs can be  
7 attributed solely to the function in question and would not exist if  
8 that function was not performed by the school district. Indirect  
9 overhead costs shall mean the pro rata share of existing  
10 administrative salaries and benefits, rent, equipment costs,  
11 utilities, and materials.

12 (C) In comparing costs, there shall be included in the cost of a  
13 contractor providing a service any continuing school district costs  
14 that would be directly associated with the contracted function.  
15 These continuing school district costs shall include, but not be  
16 limited to, those for inspection, supervision, and monitoring.

17 (2) Proposals to contract out work shall not be approved solely  
18 on the basis that savings will result from lower contractor pay rates  
19 or benefits. Proposals to contract out work shall be eligible for  
20 approval if the contractor's wages are at the industry's level and  
21 do not undercut school district pay rates.

22 (3) The contract does not cause the displacement of school  
23 district employees. The term "displacement" includes layoff,  
24 demotion, involuntary transfer to a new classification, involuntary  
25 transfer to a new location requiring a change of residence, and time  
26 base reductions. Displacement does not include changes in shifts  
27 or days off, nor does it include reassignment to other positions  
28 within the same classification and general location or employment  
29 with the contractor, so long as wages and benefits are comparable  
30 to those paid by the school district.

31 (4) The savings shall be large enough to ensure that they will  
32 not be eliminated by private sector and district cost fluctuations  
33 that could normally be expected during the contracting period.

34 (5) The amount of savings clearly justify the size and duration  
35 of the contracting agreement.

36 (6) The contract is awarded through a publicized, competitive  
37 bidding process.

38 (7) The contract includes specific provisions pertaining to the  
39 qualifications of the staff that will perform the work under the

1 contract, as well as assurance that the contractor's hiring practices  
2 meet applicable nondiscrimination standards.

3 (8) The potential for future economic risk to the school district  
4 from potential contractor rate increases is minimal.

5 (9) The contract is with a firm. A "firm" means a corporation,  
6 limited liability corporation, partnership, nonprofit organization,  
7 or sole proprietorship.

8 (10) The potential economic advantage of contracting is not  
9 outweighed by the public's interest in having a particular function  
10 performed directly by the school district.

11 (b) Notwithstanding any other provision of this chapter,  
12 personal services contracting shall also be permissible when any  
13 of the following conditions can be met:

14 (1) The contract is for new school district functions and the  
15 Legislature has specifically mandated or authorized the  
16 performance of the work by independent contractors.

17 (2) The services contracted are not available within the district,  
18 cannot be performed satisfactorily by school district employees,  
19 or are of such a highly specialized or technical nature that the  
20 necessary expert knowledge, experience, and ability are not  
21 available through the school district.

22 (3) The services are incidental to a contract for the purchase or  
23 lease of real or personal property. Contracts under this criterion,  
24 known as "service agreements," shall include, but not be limited  
25 to, agreements to service or maintain office equipment or  
26 computers that are leased or rented.

27 (4) The policy, administrative, or legal goals and purposes of  
28 the district cannot be accomplished through the utilization of  
29 persons selected pursuant to the regular or ordinary school district  
30 hiring process. Contracts are permissible under this criterion to  
31 protect against a conflict of interest or to ensure independent and  
32 unbiased findings in cases where there is a clear need for a  
33 different, outside perspective. These contracts shall include, but  
34 not be limited to, obtaining expert witnesses in litigation.

35 (5) The nature of the work is such that the criteria for  
36 emergency appointments apply. "Emergency appointment" means  
37 an appointment made for a period not to exceed 60 working  
38 days either during an actual emergency to prevent the stoppage of  
39 public business or because of the limited duration of the work. The  
40 method of selection and the qualification standards for an

~~emergency employee shall be determined by the district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.~~

~~(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the school district in the location where the services are to be performed.~~

~~(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the district's regular or ordinary hiring process would frustrate their very purpose.~~

~~(e) This section shall apply to all school districts, including districts that have adopted the merit system.~~

~~(d) This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.~~

*SEC. 2. Section 45103.1 is added to the Education Code, to read:*

*45103.1. (a) As used in this section, "school district" means a school district or a county office of education.*

*(b) Notwithstanding any provision of law to the contrary, a school district may contract for any noninstructional services of any type, if the contract is awarded in accordance with the applicable provisions of the Public Contract Code, and the governing board of the school district has determined, in its sole discretion, that the contract will provide a benefit for the school district.*

*(c) The authority to contract for noninstructional services granted by this section, includes, but is not limited to, the right to contract for consulting, management, supervision, and the direct provision of services, in any noninstructional area, including, but not limited to, any of the following:*

*(1) Facilities construction and renovation.*

*(2) Engineering, mechanical, maintenance, and repair.*

1 (3) *Food preparation and food service.*

2 (4) *Procurement, distribution, and transportation.*

3 (5) *Information technology, clerical, payroll, security,*  
4 *accounting, skilled trades, and landscaping.*

5 (d) *The contract shall be for a mutually agreed upon term,*  
6 *unless otherwise set forth in this chapter or as may be required by*  
7 *federal law.*

8 (e) *The following circumstances may not be the basis for*  
9 *invalidating a contract entered into pursuant to this section:*

10 (1) *That it results in or causes the elimination of any food*  
11 *service classified personnel or position.*

12 (2) *That it results in or causes any adverse effect upon any food*  
13 *service classified personnel or position with respect to wages,*  
14 *benefits, or other terms and conditions of employment.*

15 (3) *That food service functions, either managerial or direct, are*  
16 *to be performed under the contract by nondistrict personnel.*

17 (f) *This section is to be administered in a manner that is*  
18 *consistent with Section 35160 authorizing the governing board of*  
19 *any school district to initiate and carry on any program or activity,*  
20 *or to otherwise undertake any action in a manner that is not in*  
21 *conflict with or inconsistent with the purposes for which school*  
22 *districts are established.*

23 (g) *Sections 45122 to 45126, inclusive, and any other health*  
24 *criteria established by the school district, are applicable to all*  
25 *persons providing food service management consulting services*  
26 *under contracts entered into pursuant to this section.*

27 (h) *The section shall apply only to contracts entered into or*  
28 *amended after January 1, 2004.*

29 (i) *This section shall apply to all school districts, including, but*  
30 *not limited to, school districts that have adopted the merit system.*  
31 *Notwithstanding subdivision (e), this section may not be*  
32 *implemented in a manner that conflicts with the merit system*  
33 *adopted by the school district, or that impairs preexisting*  
34 *contractual rights or obligations.*

35 *SEC. 3. Section 45103.5 of the Education Code is repealed.*

36 ~~45103.5. All contracts for management consulting services~~  
37 ~~relating to food service shall be governed by this section.~~

38 ~~(a) Notwithstanding Sections 39902, 45103, 45104, and~~  
39 ~~45256, any school district may enter into a contract for~~  
40 ~~management consulting services relating to food service for a term~~

~~not to exceed one year. Any renewal of that contract, or further requests for proposals to provide food service management consulting services, shall be considered on a year-to-year basis. A contract for food service management consulting services shall not cause or result in the elimination of any food service classified personnel or position. A contract for food service management consulting services shall not cause or result in any adverse effect upon any food service classified personnel or position with respect to wages, benefits, or other terms and conditions of employment.~~

~~(b) A contract made pursuant to subdivision (a) shall not provide for or result in the supervision of food service classified personnel by the food service management consultant. This section shall not be construed to prevent an entity providing food service management consulting services from interacting or consulting with the food service manager or director, supervisors, or food service classified employees of a school district on matters relating to food services except those prohibited by subdivision (a).~~

~~(c) Sections 45122, 45123, 45124, 45125, 45125.5, and 45126, and any other health criteria established by the school district, are applicable to all persons providing food service management consulting services under this section.~~

~~(d) This section shall apply to all school districts, including districts that have adopted the merit system.~~

*SEC. 4. Section 45103.5 is added to the Education Code, to read:*

*45103.5. (a) For the purposes of this section, "school district" means a school district or a county office of education.*

*(b) Notwithstanding any other provision of law to the contrary, in furtherance of, and without limiting, the authority to enter into contracts pursuant to Section 45103.1, this section shall also govern all contracts entered into by a district for management services relating to food service.*

*(c) A school district may enter into a contract for management services related to food service for a mutually agreed upon term, unless otherwise set forth in this chapter or as may be required by federal law.*

*(d) A contract for food service management services may include, but need not be limited to, management services that*



1 *provide for, or result in, the supervision of district food service*  
2 *classified personnel by the food service management contractor.*

3 *(e) “Food service management services” pursuant to this*  
4 *section means any of the following related to the delivery of meals*  
5 *and other food to pupils, but only to the extent that providing the*  
6 *food service management services by the contractor is not*  
7 *inconsistent with, or prohibited by, federal law:*

8 *(1) Assistance, direction, supervision, or other conduct related*  
9 *to the procurement, menu planning and selection, food*  
10 *preparation, presentation, and serving of food products.*

11 *(2) Maintenance of food service and preparation facilities.*

12 *(3) Recordkeeping and inventory.*

13 *(4) Reimbursements, financial transactions, and the*  
14 *administration of working capital.*

15 *(5) Any and all other component services associated with the*  
16 *food service function traditionally provided by a school district.*

17 *(f) The following circumstances may not invalidate a contract*  
18 *entered into pursuant to this section:*

19 *(1) That it results in or causes the elimination of any food*  
20 *service classified personnel or position.*

21 *(2) That it results in or causes any adverse effect upon any food*  
22 *service classified personnel or position with respect to wages,*  
23 *benefits, or other terms and conditions of employment.*

24 *(3) That food service functions, either managerial or direct, are*  
25 *to be performed under the contract by nondistrict personnel.*

26 *(g) This section is to be administered in a manner that is*  
27 *consistent with Section 35160 authorizing the governing board of*  
28 *any school district to initiate and carry on any program or activity,*  
29 *or to otherwise undertake any action in a manner that is not in*  
30 *conflict with or inconsistent with the purposes for which school*  
31 *districts are established.*

32 *(h) This section does not release a school district from the*  
33 *obligation to retain authority, oversight, and control over its food*  
34 *service program as otherwise required by federal law.*

35 *(i) This section applies to all school districts, including*  
36 *districts that have adopted the merit system. Notwithstanding*  
37 *subdivision (f), this section may not be implemented in a manner*  
38 *that conflicts with the merit system adopted by the school district,*  
39 *or that impairs preexisting contractual rights or obligations.*

40 *SEC. 5. Section 88003.1 of the Education Code is repealed.*



1     ~~88003.1. (a) Notwithstanding any other provision of this~~  
2 ~~chapter, personal services contracting for all services currently or~~  
3 ~~customarily performed by classified school employees to achieve~~  
4 ~~cost savings is permissible, unless otherwise prohibited, when all~~  
5 ~~the following conditions are met:~~

6     ~~(1) The governing board or contracting agency clearly~~  
7 ~~demonstrates that the proposed contract will result in actual overall~~  
8 ~~cost savings to the community college district, provided that:~~

9     ~~(A) In comparing costs, there shall be included the community~~  
10 ~~college district's additional cost of providing the same service as~~  
11 ~~proposed by a contractor. These additional costs shall include the~~  
12 ~~salaries and benefits of additional staff that would be needed and~~  
13 ~~the cost of additional space, equipment, and materials needed to~~  
14 ~~perform the function.~~

15     ~~(B) In comparing costs, there shall not be included the~~  
16 ~~community college district's indirect overhead costs unless these~~  
17 ~~costs can be attributed solely to the function in question and would~~  
18 ~~not exist if that function was not performed by the community~~  
19 ~~college district. Indirect overhead costs shall mean the pro rata~~  
20 ~~share of existing administrative salaries and benefits, rent,~~  
21 ~~equipment costs, utilities, and materials.~~

22     ~~(C) In comparing costs, there shall be included in the cost of a~~  
23 ~~contractor providing a service any continuing community college~~  
24 ~~district costs that would be directly associated with the contracted~~  
25 ~~function. These continuing community college district costs shall~~  
26 ~~include, but not be limited to, those for inspection, supervision,~~  
27 ~~and monitoring.~~

28     ~~(2) Proposals to contract out work shall not be approved solely~~  
29 ~~on the basis that savings will result from lower contractor pay rates~~  
30 ~~or benefits. Proposals to contract out work shall be eligible for~~  
31 ~~approval if the contractors wages are at the industry's level and do~~  
32 ~~not undercut community college district pay rates.~~

33     ~~(3) The contract does not cause the displacement of community~~  
34 ~~college district employees. The term "displacement" includes~~  
35 ~~layoff, demotion, involuntary transfer to a new classification,~~  
36 ~~involuntary transfer to a new location requiring a change of~~  
37 ~~residence, and time base reductions. Displacement does not~~  
38 ~~include changes in shifts or days off, nor does it include~~  
39 ~~reassignment to other positions within the same classification and~~  
40 ~~general location or employment with the contractor, so long as~~

~~wages and benefits are comparable to those paid by the school district.~~

~~(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and community college district cost fluctuations that could normally be expected during the contracting period.~~

~~(5) The amount of savings clearly justify the size and duration of the contracting agreement.~~

~~(6) The contract is awarded through a publicized, competitive bidding process.~~

~~(7) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards.~~

~~(8) The potential for future economic risk to the community college district from potential contractor rate increases is minimal.~~

~~(9) The contract is with a firm. A "firm" means a corporation, limited liability corporation, partnership, nonprofit organization, or sole proprietorship.~~

~~(10) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the community college district.~~

~~(b) Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:~~

~~(1) The contract is for new community college district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.~~

~~(2) The services contracted are not available within community college districts, cannot be performed satisfactorily by community college district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the community college district.~~

~~(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.~~

1     ~~(4) The policy, administrative, or legal goals and purposes of~~  
2 ~~the community college district cannot be accomplished through~~  
3 ~~the utilization of persons selected pursuant to the regular or~~  
4 ~~ordinary hiring process. Contracts are permissible under this~~  
5 ~~criterion to protect against a conflict of interest or to ensure~~  
6 ~~independent and unbiased findings in cases where there is a clear~~  
7 ~~need for a different, outside perspective. These contracts shall~~  
8 ~~include, but not be limited to, obtaining expert witnesses in~~  
9 ~~litigation.~~

10    ~~(5) The nature of the work is such that the criteria for~~  
11 ~~emergency appointments apply. “Emergency appointment”~~  
12 ~~means an appointment made for a period not to exceed 60 working~~  
13 ~~days either during an actual emergency to prevent the stoppage of~~  
14 ~~public business or because of the limited duration of the work. The~~  
15 ~~method of selection and the qualification standards for an~~  
16 ~~emergency employee shall be determined by the community~~  
17 ~~college district. The frequency of appointment, length of~~  
18 ~~employment, and the circumstances appropriate for the~~  
19 ~~appointment of firms or individuals under emergency~~  
20 ~~appointments shall be restricted so as to prevent the use of~~  
21 ~~emergency appointments to circumvent the regular or ordinary~~  
22 ~~hiring process.~~

23    ~~(6) The contractor will provide equipment, materials, facilities,~~  
24 ~~or support services that could not feasibly be provided by the~~  
25 ~~community college district in the location where the services are~~  
26 ~~to be performed.~~

27    ~~(7) The services are of such an urgent, temporary, or occasional~~  
28 ~~nature that the delay incumbent in their implementation under the~~  
29 ~~community college district’s regular or ordinary hiring process~~  
30 ~~would frustrate their very purpose.~~

31    ~~(e) This section shall apply to all community colleges,~~  
32 ~~including community college districts that have adopted the merit~~  
33 ~~system.~~

34    ~~(d) This section shall apply to personal service contracts~~  
35 ~~entered into after January 1, 2003. This section shall not apply to~~  
36 ~~the renewal of personal services contracts subsequent to January~~  
37 ~~1, 2003, where the contract was entered into before January 1,~~  
38 ~~2003, irrespective of whether the contract is renewed or rebid with~~  
39 ~~the existing contractor or with a new contractor.~~

1 SEC. 6. Section 88003.1 is added to the Education Code, to  
2 read:

3 88003.1. (a) Notwithstanding any provision of law to the  
4 contrary, a community college district may contract for any  
5 noninstructional services of any type, without any limitation, if the  
6 contract is awarded in accordance with the applicable provisions  
7 of the Public Contract Code, and the governing board of the  
8 community college district has determined, in its sole discretion,  
9 that the contract will provide a benefit for the community college  
10 district.

11 (b) The authority to contract for noninstructional services  
12 pursuant to this section includes, but is not be limited to, the right  
13 to contract for consulting, management, supervision, and the  
14 direct provision of services in any noninstructional area,  
15 including, but not limited to, any of the following:

- 16 (1) Facilities construction and renovation.  
17 (2) Engineering, mechanical, maintenance, and repair.  
18 (3) Food preparation and food service.  
19 (4) Procurement, distribution, and transportation.  
20 (5) Information technology, clerical, payroll, security,  
21 accounting, skilled trades, and landscaping.

22 (c) The contract shall be for a mutually agreed upon term.

23 (d) The following circumstances may not be the basis for  
24 invalidating a contract entered into pursuant to this section:

- 25 (1) That it results in or causes the elimination of any food  
26 service classified personnel or position.  
27 (2) That it results in or causes any adverse effect upon any food  
28 service classified personnel or position with respect to wages,  
29 benefits, or other terms and conditions of employment.  
30 (3) That food service functions, either managerial or direct, are  
31 to be performed under the contract by nondistrict personnel.

32 (e) This section is to be administered in a manner that is  
33 consistent with Section 70902 authorizing the governing board of  
34 any community college district to initiate and carry on any  
35 program or activity, or to otherwise undertake any action in a  
36 manner which is not in conflict with or inconsistent with the  
37 purposes for which community college districts are established.

38 (f) Sections 88021 to 88025, inclusive, and any other health  
39 criteria established by the community college district, are

1 *applicable to all persons providing services under contracts*  
2 *entered into pursuant to this section.*

3 (g) *This section applies only to contracts entered into, renewed,*  
4 *or amended after January 1, 2004.*

5 (h) *This section applies to all community college districts,*  
6 *including, but not limited to, community college districts that have*  
7 *adopted the merit system. Notwithstanding subdivision (d), this*  
8 *section may not be implemented in a manner that conflicts with the*  
9 *merit system adopted by the community college district or that*  
10 *impairs preexisting contractual rights or obligations.*

11 *SEC. 7. Section 88004.5 of the Education Code is repealed.*

12 ~~88004.5. All contracts for management consulting services~~  
13 ~~relating to food service shall be governed by this section.~~

14 ~~(a) Notwithstanding Sections 88003, 88004, 88020.5, and~~  
15 ~~88076, any community college district may enter into a contract~~  
16 ~~for management consulting services relating to food service for a~~  
17 ~~term not to exceed one year. Any renewal of that contract, or~~  
18 ~~further requests for proposals to provide food service management~~  
19 ~~consulting services, shall be considered on a year-to-year basis. A~~  
20 ~~contract for food service management consulting services shall not~~  
21 ~~cause or result in the elimination of any food service classified~~  
22 ~~personnel or position. A contract for food service management~~  
23 ~~consulting services shall not cause or result in any adverse effect~~  
24 ~~upon any food service classified personnel or position with respect~~  
25 ~~to wages, benefits, or other terms and conditions of employment.~~

26 ~~(b) A contract made pursuant to subdivision (a) shall not~~  
27 ~~provide for, or result in the supervision of, food service classified~~  
28 ~~personnel by the food service management consultant. This~~  
29 ~~section shall not be construed to prevent an entity providing food~~  
30 ~~service management consulting services from interacting or~~  
31 ~~consulting with the food service manager or director, supervisors,~~  
32 ~~or food service classified employees of the community college~~  
33 ~~district on matters relating to food services except those prohibited~~  
34 ~~by subdivision (a).~~

35 ~~(c) Sections 88021, 88022, 88023, 88024, and 88025, and any~~  
36 ~~other health criteria established by the local community college~~  
37 ~~district, are applicable to all persons providing food service~~  
38 ~~management consulting services under this section.~~

39 ~~(d) This section shall apply to all community college districts,~~  
40 ~~including districts that have adopted the merit system.~~

1 SEC. 8. Section 88004.5 is added to the Education Code, to  
2 read:

3 88004.5. (a) Notwithstanding any other provision of law to  
4 the contrary, in furtherance of, and without limiting, the authority  
5 to enter into contracts pursuant to Section 88003.1, this section  
6 shall also govern all contracts entered into by a community college  
7 district for management services relating to food service.

8 (b) A community college district may enter into a contract for  
9 management services related to food service for a mutually agreed  
10 upon term.

11 (c) A contract for food service management services may  
12 include, but need not be limited to, management services that  
13 provide for or result in the supervision of district food service  
14 classified personnel by the food service management contractor.

15 (d) "Food service management services" pursuant to this  
16 section means any of the following related to the delivery of meals  
17 and other food to students:

18 (1) Assistance, direction, supervision, or other conduct related  
19 to procurement, menu planning and selection, food preparation,  
20 and the serving of food products.

21 (2) Maintenance of food service and preparation facilities.

22 (3) Recordkeeping and inventory.

23 (4) Reimbursements, financial transactions, and the  
24 administration of working capital.

25 (5) Any and all other component services associated with the  
26 food service function traditionally provided by a community  
27 college district.

28 (e) The following circumstances may not be the basis for  
29 invalidating a contract entered into pursuant to this section:

30 (1) That it results in or causes the elimination of any food  
31 service classified personnel or position.

32 (2) That it results in or causes any adverse effect upon any food  
33 service classified personnel or position with respect to wages,  
34 benefits, or other terms and conditions of employment.

35 (3) That food service functions, either managerial or direct, are  
36 to be performed under the contract by nondistrict personnel.

37 (f) This section is to be administered in a manner that is  
38 consistent with Section 70902 authorizing the governing board of  
39 any community college district to initiate and carry on any  
40 program or activity, or to otherwise undertake any action in a

1 manner that is not in conflict with or inconsistent with the purposes  
2 for which community college districts are established.

3 (g) This section applies to all community college districts,  
4 including districts that have adopted the merit system.  
5 Notwithstanding subdivision (e), this section may not be  
6 implemented in a manner that conflicts with the merit system  
7 adopted by the community college district, or that impairs  
8 preexisting contractual rights or obligations.

9 SEC. 9. Section 3562.3 is added to the Government Code, to  
10 read:

11 3562.3. (a) This chapter does not limit the authority, power,  
12 right, or ability, of the University of California, the Hastings  
13 College of the Law, and the California State University, to enter  
14 into contracts with third parties for any noninstructional services,  
15 regardless of whether those services were previously performed or  
16 could be performed by an employee of the University of California,  
17 the Hastings College of the Law, or the California State University.

18 (b) Notwithstanding Section 3562, for purposes of the  
19 University of California, the Hastings College of the Law, or the  
20 California State University, “scope of representation” shall not  
21 include a decision by the covered entity to contract out for  
22 noninstructional services.

23 (c) This section may not be implemented in a manner that  
24 conflicts with the merit system, as applicable, or that impairs  
25 preexisting contractual rights or obligations.

26 ~~repealed.~~

27 ~~SEC. 2. Section 88003.1 of the Education Code is repealed.~~

28